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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL TAYLOR OTT,

Defendant.

No. CR 17 00533 EMC

**NOTICE OF JOINT GROUP ONE
DEFENSE OBJECTION TO THE
INTRODUCTION OF SEVEN
STATEMENTS**

**Dept: The Honorable Edward M. Chen
United States District Judge**

**TO: THE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF
CALIFORNIA; ASSISTANT UNITED STATES ATTORNEYS KEVIN BARRY,
AJAY KRISHNAMURTHY AND LINA PENG; AND TO THE CLERK OF THE
ABOVE-ENTITLED COURT:**

NOTICE OF JOINT GROUP ONE OBJECTION TO SEVEN STATEMENTS

Yesterday afternoon the government provided notice of seven co-conspirator statements/statements by party opponent from an electronic extraction to be “used” with Sergeant Harm. The government provided a chart for the seven statements, GX 853 (statements).pdf, which is attached hereto as exhibit A. GX 853 from the government’s exhibit list is described as a Will Fonteno phone extraction. The government noted that the statements were on the previously on the co-conspirator statement chart, but on the attached chart they are under a different numbering system. The defense objects to the admission of all of the statements. The Court has already sustained objections to six of the statements (four of which the government stated they were no longer seeking to introduce under FRE 801(d)(2)(E)), and the defense objects to the seventh statement because it does not in fact appear on the co-conspirator chart. The notice is untimely and there is an objection on FRE 403 grounds.

On the Exhibit A chart the seven statements are numbered 209, 247, 244, 361, 360, 798, 799. The numbered statements correspond to different numbers on the co-conspirator chart as set out in the below table, and statement 799 does not appear on the co-conspirator chart.

EXHIBIT A	CO-CONSPIRATOR CHART
209	Statement 217
247	Statement 235
244	Statement 234
361	Statement 245
360	Statement 246
798	Statement 312
799	

Per its Order re Co-Conspirator Statements (ECF 2514), the Court has already sustained objections to the six statements that appear on the co-conspirator chart. For four of these statements (217, 361, 360, 312), the government stated that it was no longer seeking to admit the statement under FRE 801(d)(2)(E). The seventh statement, attributed to Jon Nelson is in a group text message on February 21, 2015. The statement reads:

1 My brothers I'm so proud to be a Sonoma co hells angel you know when you are on
2 your bike and you get to think a lot. We just rode as a team through a lot of places
3 were (sic) there are more people that hate us than love us. All so we could pay respect
to a brother who was killed. Not only a brother but one of our brothers (sic) son also.
Then on the way to here to find out about big mike from tuson (sic)

4 For unexplained reasons the government is now trying to admit statements that the Court has
5 already ruled should stay out. As to the seventh statement, the notice of the statement is late, the
6 exact context of the statement in a group text is not clear, and the statement is of little probative
7 value, vastly outweighed by its potential prejudice.

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9 Dated: May 22, 2022

Respectfully submitted,
/s/

10 ROBERT F. WAGGENER
11 MARCIA M. MORRISSEY
12 JOHN T. PHILIPSBORN
13 K. ALEXANDRA McCLURE
14 JAI M. GOHEL
15 RICHARD G. NOVAK

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17 By: /s/ Robert F. Waggener
18 ROBERT F. WAGGENER
19 On Behalf of Group One Defense
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